

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

H. CHRISTINE HIGGINS,)
)
Plaintiff,)
)
vs.) CIVIL NO. 06-295-GPM
)
JO ANNE BARNHART, Commissioner of)
Social Security,)
)
Defendant.)

MEMORANDUM AND ORDER

MURPHY, Chief District Judge:

This matter is before the Court on Plaintiff's motion for leave to proceed *in forma pauperis* (Doc. 3). On April 13, 2006, Plaintiff filed a civil complaint seeking judicial review, pursuant to 42 U.S.C. § 405(g), of a final decision by Defendant to deny her claim for disability insurance benefits and supplemental security income (Doc. 1).

A federal court is authorized under 28 U.S.C. § 1915(a)(1) to permit an indigent party to proceed in a civil action without prepaying the filing fee if two conditions are met: (1) the petitioner is indigent, and (2) the action is neither frivolous nor malicious. *See, e.g., Smith-Bey v. Hospital Adm'r*, 841 F.2d 751, 757-58 (7th Cir. 1981); *Free v. United States*, 879 F.2d 1535 (7th Cir. 1989). Under Local Rule 3.1(b), any person seeking leave to proceed *in forma pauperis* under 28 U.S.C. § 1915 shall submit an affidavit of poverty which shall conform, as nearly as possible and as applicable, with the form affidavit used pursuant to 28 U.S.C. § 2254.

In this case, Plaintiff's affidavit in support of her motion reveals that she is not presently

employed. In the last twelve months, she has only received money from the State of Michigan for disability, and these payments ended in 2005. She has nothing in checking and savings accounts, and she has no other assets. Based upon the foregoing information, the Court finds Plaintiff to be indigent within the meaning of 28 U.S.C. § 1915(a)(1).

As an additional matter, the Court has reviewed Plaintiff's complaint and finds that, at this time, the action does not appear to be frivolous or malicious. *See Jones v. Morris*, 777 F.2d 1277, 1279-80 (7th Cir. 1985) (holding that a complaint is deemed frivolous only if a petitioner can make no rational argument in law or facts to support his claim for relief).

For the foregoing reasons, the motion for leave to proceed *in forma pauperis* (Doc. 2) is **GRANTED** as to this Court only. The Clerk of Court is **DIRECTED** to provide Plaintiff with a blank form of summons and three blank forms USM-285. Plaintiff is hereby **ORDERED** to complete the form of summons and return it to the Clerk of Court. The Clerk of Court **SHALL** issue the completed summons. Unless service is waived pursuant to Federal Rule of Civil Procedure 4(d), the United States Marshal **SHALL**, in accordance with Rule 4(i), personally or by registered or certified mail serve upon Defendant the summons, a copy of the complaint, and a copy of this Memorandum and Order. All costs of service shall be advanced by the United States. Plaintiff is responsible for providing all necessary materials and copies thereof to the United States Marshal's Service. In completing the steps set forth above, Plaintiff is **ADVISED** pursuant to Rule 4(m) that this action will be dismissed without prejudice if service is not effected within 120 days of the date of this Memorandum and Order.

It is **FURTHER ORDERED** that Plaintiff shall serve upon Defendant, or upon Defendant's attorney if appearance has been entered by counsel, a copy of every further pleading or other

document submitted for consideration by this Court. She shall include with the original paper to be filed with the Clerk of Court a certificate stating the date that a true and correct copy of any document was mailed to Defendant or her counsel. Any paper received by a District Judge or a Magistrate Judge which has not been filed with the Clerk of Court or which fails to include a certificate of service will be disregarded by the Court.

IT IS SO ORDERED.

DATED: 04/25/06

s/ G. Patrick Murphy
G. PATRICK MURPHY
Chief United States District Judge